

REMARKS/ARGUMENTS

Claims 1 and 35 have been amended.

No claim is cancelled by the current amendment.

No new claim has been introduced.

Thus claims 1-35 are currently pending.

Applicant appreciates the indication of allowability of the subject-matter of claims 17, 20 and 27-30, but however asserts that all claims on file are in fact allowable.

Claim rejections under 35 U.S.C. § 102

Claims 1-2, 6-8, 12-15 and 33-35 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Kondo (US Patent 4,662,133). Applicant respectfully traverses this rejection.

From the MPEP section 2131, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (...) The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990)" (*internal quotes omitted*).

Kondo fails to teach all features of claim 1 and uses an arrangement that differs from that of claim 1.

Applicant maintains all arguments presented in the previous response, filed on December 8, 2010. These arguments are not repeated in full herein, for brevity. Some additional arguments and clarifications are hereby made.

According to the Office Action, Kondo teaches a fixed portion (62 left, 62 right) and a movable portion (42 on the left, 44 on the right). These elements, which are split between a left part and a right part (see Kondo Fig. 1), are disjoint. The Patent Office reads distinct elements from Kondo on single elements of the claim. For instance, two separate engaging members (62 left, 62 right) are commonly read on Applicant's fixed portion. Likewise, two disjoint sliding members (42 on the left and 44 on the right) are read on a single movable portion. While it is well settled that, in claim language, the singular includes the plural, the use of definite articles such as "the" or "said" for in a phrase such as "said fixed portion having a second end" renders it clear that it is the same fixed portion, introduced earlier, that has the second end. In contrast, the Office Action reads two distinct, disjoint and separate members 62 as supplying the claim features of "a" fixed portion having two ends. As recited hereinabove, from MPEP 2131, "The elements must be arranged as required by the claim". Kondo, at best, may teach "a plurality of elements (i.e. 2), each having one end". The Patent Office has not shown that Kondo teaches an arrangement teaching the claim features and has thus not made a demonstration of anticipation of claim 1.

However, in order to advance prosecution of the present case, Applicant has amended, without prejudice, claims 1 and 35 in order to better recite the invention.

As amended, claim 1 recites a brace apparatus to be mounted between two portions of a structure subjected to a loading force to limit movements due to the loading force. The brace apparatus comprises a fixed portion, a movable portion, and a tensionable assembly.

The fixed portion has a first end to be fixedly mounted to one of the two portions of the structure. The first end of the fixed portion defines a first fixed portion abutting surface. The fixed portion also has a second end defining a second fixed portion abutting surface. The second end of the fixed portion is a free end positioned on a side opposite the first end of the fixed portion, in a direction of movement.

The movable portion has a first end to be fixedly mounted to another one of the two portions of the structure. The first end of the movable portion defines a first movable portion abutting surface. The movable portion also has a second end defining a second

movable portion abutting surface. The second end of the movable portion is a free end positioned on a side opposite the first end of the movable portion, in a direction of movement.

The tensionable assembly mounts the movable portion to the fixed portion so that the first movable portion abutting surface is in proximity of the second fixed portion abutting surface, and so that the first fixed portion abutting surface is in proximity of the second movable portion abutting surface. The tensionable assembly includes a first abutting element in the proximity of the first end of the fixed portion and a second abutting element in the proximity of the first end of the movable portion. The first and second abutting elements are interconnected by an adjustable tensioning element.

When a loading force moves the movable portion away from the fixed portion, the first abutting element abuts the first fixed portion abutting surface and the second abutting element abuts the first movable portion abutting surface to thereby limit the movement of the movable portion away from the fixed portion. When a loading force moves the movable portion towards the fixed portion, the first abutting element abuts the second movable portion abutting surface and the second abutting element abuts the second fixed portion abutting surface to thereby limit the movement of the movable portion towards the fixed portion.

A relationship between components of the claimed brace apparatus is defined in the language of claim 1. In the claim as amended, the fixed and the movable portions are fixedly mounted to respective ones of the two portions of the structure. Each of the fixed and movable portions comprises two ends, in which one end is a free end opposite the other end.

In Kondo, a pair of tension coil springs 54 connects one sliding member 42 to another sliding member 44. The two sliding members 42, 44 are attached to guide members 32, 34, which are fixed to a base plate 30 of a restoring unit 26 or 28, the base plate 30 itself being on the upper surface of a foundation 12. Considering claim 1 as amended, Kondo does not teach, in a brace apparatus, either a fixed portion or a movable portion, each portion having two ends wherein one end is a free end opposite the other end in a direction of movement.

None of the sliding members 42, 44 is fixedly attached to any part of a structure because the two sliding members may move relative to Kondo's entire restoring unit 26 or 28. Kondo therefore does not teach "a movable portion having a first end to be fixedly mounted to (another) one of the two portions of the structure".

Therefore, in view of the above comments, it is submitted that Kondo does not teach several features of claim 1. Kondo also does not teach elements arranged as required by claim 1. Applicant respectfully submits that claim 1 is novel in view of Kondo.

Kondo fails to teach all features of independent claim 35.

As mentioned hereinabove, claim 35 is amended in order to advance prosecution. Changes made to the features of claim 35 are similar to the amendments brought into claim 1. Consequently, all arguments presented for the patentability of claim 1 over Kondo equally apply to claim 35.

In claim 35, when a loading force is applied to oppose end pairs, the force compresses the brace apparatus. In the previous response, Applicant has indicated that Kondo's spring 54 cannot be compressed and that Kondo does not teach or suggest "the loading force applied to said first opposed end pairs (...) compresses said apparatus".

In the response to Applicant's arguments, at the middle of page 15, the Final Office Action reads "forces can try to move the members 42 and 44 together. While this would place an additional stress on members 50 and 60, the spring would still additionally compress". Respectfully, this argument is specious. The elements 60 are defined in Kondo as "stoppers 60". By definition, these elements are unmovable, unless Kondo's device is actually broken. Additionally, moving the members 42 and 44 further inward from their resting position of Fig. 1 would imply bending or breaking the members 50 and/or 62. Kondo mentions "breakage" only once, in his Background, at col. 2, lines 14-19, when describing an earlier floor system that "completely fails to perform its own function" when such breakage occurs. Clearly, breaking Kondo's device is not part of its intended normal use. No one skilled in the art would have found in Kondo a teaching of compressing springs 54 by moving the members 42 and 44 inward, pushing them until the various

members 50, 62 and 60 actually become broken. No matter any notion that Kondo's device could eventually become broken under extreme force, the Kondo reference does not provide a teaching involving compression of Kondo's spring. Inventive ingenuity, beyond the capability of the person of ordinary skill in the art, would be required in order to acquire such a teaching following a reading of Kondo.

Therefore, in view of the above comments, Applicant respectfully submits that claim 35 is novel in view of Kondo.

Claims 1, 9-11, 15, 16, 18, 19, 21-24, 31 and 35 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Fyfe et al. (US Patent 4,605,106). Applicant respectfully traverses this rejection.

Fyfe fails to teach all features of claim 1. Earlier arguments introduced by the Applicant are not repeated herein but are nevertheless maintained.

In the previous response, Applicant has noted that, in Fyfe, the inner cylinder 3 is much shorter than the outer cylinder 1. This difference in lengths of the cylinder is not a mere design detail. Fyfe's requires this configuration for insertion of viscoelastic discs 13, solid disc 15, perforated plate 17, and viscous material 19 between a round plate 11, immediately to the right of the inner cylinder 3, and the end cap 6. Consequently, Fyfe does not teach "said first fixed portion abutting surface is in proximity of the second movable portion abutting surface". Additional arguments were also presented in Applicant's previous response.

Regarding the term "proximity", in the Response to Arguments, near the bottom of page 15, the Final Office Action reads, "While the term requires closeness, it does not require that the parts be touching. Second, it is noted that the figures are not drawn to scale". Respectfully, Applicant did not argue that the parts had to be touching. However, those of ordinary skill in the art would have appreciated that the proximity required by the claim language is not found in Fyfe. While claim features should be interpreted broadly, as duly noted in the Response to Arguments, the Patent Office's position actually deprives the term "proximity" of any useful meaning. Additionally, the Patent Office indicates that "the figures are not drawn to scale". On the contrary, Fyfe's Brief Description of Drawings, at

col. 2, lists "cross section views" for his drawings, not "schematic drawings". Fyfe's Figs 1-4 clearly are mechanical drawings, drawn to scale.

The Response to Arguments also reads "Applicant then argues that plate 9 cannot move left, but that is assuming that plate 9 was started in the leftmost position." This position of the Patent Office is untenable. Assuming, solely for the sake of demonstration, an interpretation of Fyfe in which a "starting position" consists of a state wherein his viscoelastic discs 13 and other compressible materials are under some initial level of compression, then the following claim 1 feature would not be supported in Fyfe:

"wherein, i) when a loading force moves the movable portion away from the fixed portion, said first abutting element abuts the first fixed portion abutting surface and said second abutting element abuts the first movable portion abutting surface to thereby limit the movement of the movable portion away from the fixed portion".

From a starting position wherein the viscoelastic discs 13 are under some initial compressing pressure, if a force moves Fyfe's elements 5 and 6 away from each other, the initial compression will accentuate – not limit – any relative movements between said elements 5 and 6.

Therefore, in view of the above comments, Applicant respectfully submits that claim 1 is novel in view of Fyfe.

Fyfe fails to teach all features of independent claim 35.

Fyfe's device does not provide any means to oppose any tension force, so the limitation of "whereby said first and second bracing members are movable apart when the loading force applied to said first opposed end pairs i) tensions said apparatus" is not found in Fyfe.

Therefore, in view of the above comments, Applicant respectfully submits that claim 35 is novel in view of Fyfe.

Claims 1, 25 and 26 stand rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Sridhara (US Patent 7,188,452). Applicant respectfully traverses this rejection.

Sridhara fails to teach all features of claim 1.

Arguments for the patentability of claim 1 over Sridhara, presented in Applicant's previous response, are not repeated herein but are however maintained by the Applicant. In the Response to Arguments, near the top of page 1, the Final Office Action reads, "a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art". That is indeed the case, as expressed specifically in Applicant's previous response.

Applicant first observes that the previous and present Office Actions have identified Sridhara's sleeve 51 as reading on the movable portion of claim 1. As written in the previous response, Sridhara's brace 58 is for attaching to a structure at both gussets 53, which are attached to the core rod 50. Both ends of a same element (core rod 50) are thus attached to the structure. Some relative movement between the sleeve 51 and the core rod appear possible. Sridhara however does not teach or hint that the sleeve 51 is for attachment to a structure. Sridhara therefore does not teach both "a fixed portion having a first end to be mounted to a portion of the structure" and "a movable portion having a first end to be mounted to a portion of the structure", as in claim 1. The structural difference required for distinguishing the claim limitation from Sridhara is entirely clear, for example in Sridhara's Fig. 15a: Sridhara does not teach, hint or suggest any attachment means of the sleeve 51 to any structure. Of course, Sridhara's device as a whole is for attachment to a structure, at both ends 53. But Sridhara does not teach a fixed portion attached to the structure and a movable portion also attached to the structure, in a manner similar to that specified in claim 1. If Sridhara's sleeve 51 reads on the "movable portion" of claim 1, as argued in the Office Actions, then Sridhara does not provide any means to connect this sleeve to a structure. Consequently, Sridhara does not teach a movable portion for mounting to a structure.

As for the mention, in the Response to Arguments, related to the fact that "springs are still disclosed in a separate embodiment", this remark does not address the point that the

Application No. 10/591,381
Amendments dated May 5, 2011
Reply to Office Action dated March 7, 2011

springs 157, when present as in Sridhara's Figure 15a, do not have the function of "mounting said movable portion to said fixed portion", as in the case of the tensionable assembly of claim. With respect, it is believed that the Patent Office has used improper hindsight in determining that the springs 157 have this mounting function. A careful reading of Sridhara's complete disclosure will show no such teaching. The springs may or may not be present, but have no contribution to mounting together various parts of Sridhara's device.

Therefore, in view of the above comments, Applicant respectfully submits that claim 1 is novel in view of Sridhara. The same arguments equally apply for demonstrating the patentability of claim 25 in view of Sridhara.

For those reasons, Applicant respectfully submits that the subject matter of independent claims 1 and 35 is patentable in view of Kondo, Fyfe and Sridhara. Withdrawal of the rejection is kindly requested. Claims 2-34, being dependent on allowable claim 1, should also be found patentable.

Applicant respectfully submits that no new matter has been introduced by way of the present amendment.

In light of the foregoing amendments and remarks, favourable reconsideration and timely allowance is respectfully requested.

Should the Examiner believe that a phone interview could expedite prosecution of the present application, she is invited to contact the undersigned patent agent.

Respectfully submitted,

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